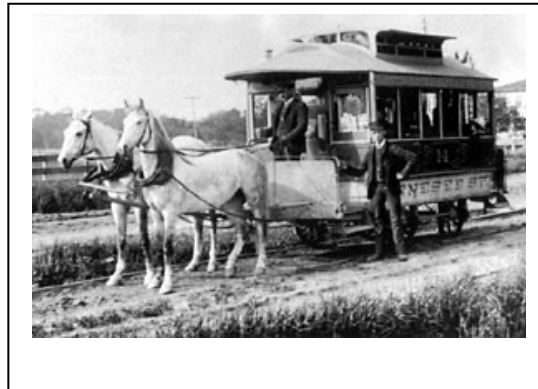


**PART VI**  
**THE SOUTH SALINA STREET ARSON**  
**THE BENNETT INSURANCE CASE**  
**SYRACUSE, NEW YORK**

Part VI is a summary of closing arguments in the civil trial taken from the July 1 and July 4, 1871 Syracuse New York Daily Standard.

Parts I – V took us from December 27, 1869 through much of the civil trial as over thirty insurance companies presented information about the fire and insurance claims in excess of \$450,000. Today that would amount to over 11 million dollars. Not every article has been found and some found were of poor quality and unreadable. The civil trial ran from April through June and had been moved from Syracuse to Utica. Closing arguments were reported July 1-4. These articles fill in the blanks and give a good picture of the various parties and their positions.

Although there is some repetition in the two articles there is also new information in each story. An interesting story unfolds and sets the stage for criminal charges if the court finds for the insurance carriers. The Referee's decision will be covered in Part VII.



Attorney's attending court in Utica, NY  
would have traveled on street cars like  
this in the late 1800's  
Courtesy of Oneida County Historical Society  
[www.oneidacountyhistory.com](http://www.oneidacountyhistory.com)

**THE SYRACUSE NEW YORK DAILY STANDARD  
JULY 1, 1871**

**THE BENNETT INSURANCE CASE**

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**Summing Up By Counsel**

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**Synopsis of Judge Mason, Mr. Harding's and David J Mitchell's Addresses**

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**Objections In The Insurance Policies**

Judge Mason said there were objections which the defense would offer upon the conditions in the policies. Many of them contained conditions against the use of kerosene and against assigning the policies should contest arise. Some of these conditions were strong. He had prepared an extract which he presented to the court without reading. Some of the policies named kerosene and others petroleum as interdicted articles. He should insist that when petroleum was prescribed it extended to kerosene. His conclusion was that these policies which named petroleum as forbidden, also forbade kerosene.

As to the assignment of the policies the defense had been annoyed, because Mr. Bennett was not the party on record in theory, although he was such party in fact. He quoted from Hill to show a similar case where an assignment was made to avoid a policy. Such contracts proceeded upon the general principle that they were void on public policy reasons. He quoted again, to show the conditions against the use of kerosene formed a continued contract.

**UNEXPECTED EVIDENCE – THE CONSPIRATORS**

The case had an extraordinary history. The defense expected at first only to defend the policies on a chain of strong circumstantial evidence. Strangely enough it had been defended more than a week against Samuel F. Bennett, Adam Fralick and F. P. Vedder, the conspirators. The counsel had defended these men with equal power. The defense had continued until it had pushed a lever under one of the conspirators and lo! The key was turned which exposed the secrets of all this villainy.

There was a mass of circumstantial evidence, if Mr. Vedder's confession was left out, which would be sufficient defense for the policies. But Mr. Vedder's confession was all.

It was true Mr. Vedder had made contradictory statements, but his whole evidence was in the case, and the court should not strike it out. His words should be given the weight they ought to have. Vedder had sworn that Fralick told him the fire was coming off two weeks before it did, and the other evidence had sustained him in his allegation that the preparations were going on three weeks before, but even longer than that. Vedder's statement in regard to the kerosene was substantiated by a mass of evidence. The testimony of the three sons of Mr. Vedder alone sufficient to convict Mr. Fralick. Bennett was with him a short time before drinking apple jack. The boys were warned by Fralick to leave the store, that Bennett might have an interview. They leave and come back, and one through the keyhole and the other through the side of the window see the conspirators Fralick and Bennett in consultation.

If the proper rule were applied Bennett would stoop so low his counsel could not find him. Why did Bennett and Fralick rent a store across the road and even before the fire took place? Why was this but to prepare for the reception of the goods after the fire? These straws all indicate the intent of Bennett and Fralick.

Why was the back door unbolted and every other avenue fastened? Bennett was the man who took the bar from the back door, and he did it for the reason that he might charge the fire upon Fralick if any questions were raised about it. There sat the man (pointing to Bennett) who concocted that part.

Again Bennett had refused to pay the private watchman, but he got rid of, and on the fatal night Adam took that watchman away at the time the candles were burning. He came back too quickly, and the watchman says, standing over Bennett's grating, "I smell fire!" "Pshaw!" says Fralick, to throw him off his guard, "it is nothing but my cigar."

On Sunday night the grand rush of goods from Bennett's store takes place – the culminating point Bennett announced some time before arriving.

Another circumstance was that Bennett sent his bookkeeper to Binghamton, and then himself made up the accounts of his clerks on Christmas – a time most unusual – and pays them off.

It was a crushing piece of evidence he would allude to. Fralick was bold, to be sure, because the fire was to be set in Bennett's store, and he could afford to be more open. But the main point was, the immense amount of insurance procured the fire.

Bennett for a long time had found a two-gallon can sufficient to procure his kerosene. But, in December, he needed a ten-gallon can. He thought Mr. Bennett needed that for the very purpose of procuring the extra kerosene.

One of the most startling things in the case occurred Friday evening, when Mundy, the carpet man, after turning down his lights, heard Bennett and Fralick talking. What Bennett said: -

“Mr. Fralick, when you burned out what became of the books.”

Fralick – “Oh, they went with the fire, ha! ha?”

They knew what they were talking about. How was it at Little Falls? Why Fralick had burned out there three times and the last two were called Fralick and Bennett fires. He believed the whole plan was concocted at Little Falls, long before they came to Syracuse. The omission of Mr. Bennett to call Fralick in this case was an argument in favor of the defense.

Mr. Bennett’s own evidence sustained the fact that the Crouse House was fired to draw the attention of the firemen from the basement. And who could have done that? Miss Merrill was well-known to have had a great deal to do with Bennett. She had charge of that house under Bennett. Why did they not put her on the stand? They knew she would be obliged to perjure herself to free her skirts from the trouble.

The packing of the goods in Vedder’s store the prosecution would claim did not connect Bennett with the fire. it was but another part of the whole scheme. They through this had hoped and did hope they could say they had nothing to do with it. The prosecution would again ask what motive would Mr. Bennett have to burn this building with such a vast amount of goods. The defense would show and had showed there was not \$50,000 worth of goods in the store at the time of the fire.

Bennett had sworn that he only sold \$500 worth of goods to Vedder that Sunday night; when the evidence of one of the clerks shows that a single trunk contained over \$1,000 worth. How was it again that Vedder had given his notes to Bennett for over \$40,000 since the fire. Surely Vedder could not concoct any such scheme to get himself into Bennett’s debt.

Samuel F. Bennett was a bold, reckless, illegitimate merchant. Briggs, Bennett’s clerk, had come from Little Falls so poor he could not pay his wash bill. But Bennett takes him to Syracuse and then sets him up in business at Rome, and gives him credit of \$100,000 of goods! The defense had shown by the freight bills that \$78,000 worth of goods went to Rome. At Rome and at all the auction stores, immense amounts of goods were rushed off. If any man doubted the reason of the trial, he ought to doubt it no longer when Bennett gave his evidence. he gave the unerring evidence that he was a lying witness. He could not remember, and he could not remember was the burned of his story. It was the rule that when a witness failed to tell what he was evidently familiar with that he was endeavoring to falsify.

Why did not Bennett inquire of some one to ascertain the origin of the fire? he affirmed that he had not. In that single statement he confessed his guilt. If Samuel F. Bennett set that fire how was his contract with the insurance company. It was void. He went on the stand with \$130,000 resting on his oath. It was an immense temptation! But he stood here with higher motives for perjury! He stood here charged with arson in the

first degree! It too had driven him to the crime of perjury to save himself from the State prison life.

Judge Mason closed by stating that not a particle of reliance could be placed on the word of Samuel F. Bennett.

### **The Prosecution – Harding’s Remarks**

#### THE USE OF KEROSENE.

It had fallen to his lot to speak of the points of law, and also concerning some of the facts in the case. He alluded first to the policies produced – to the objection against their assignability. Judge Mason had himself confessed there were some doubts as to the points he had made, and his alone, with a man of his learning and ability was sufficient to carry the point in favor of the prosecution. Mr. Harding read a policy and said he found the strongest language against the use of kerosene in only a few of the policies. Only a few of the policies contained the words prohibiting the assignment of policies after loss. He referred the court to authorities which would completely answer the affirmation of the defense on those points. The defense had claimed the forfeiture clause and they did so only because they thought they might fail on all others. He said the written part of a policy prevailed over the printed part. All the agents had knowledge that the kerosene was used; they had solicited the policies at Bennett’s store and must have examined the premises. They must have seen the kerosene in use. This knowledge of the agent was the knowledge of the company and it was equivalent to notice.

Closing that branch of the case Mr. Harding urged that the civil case should be settled on as stringent rules as if it were a criminal one. The defense should establish their cases beyond doubt before a verdict could be rendered in their favor. He said the character of the Bennett Brothers, up to the time of the fire was unquestioned. The value of goods on hand was sustained by the revenue books. And hence there was no motive for S. F. Bennett to burn that property. Before the court could conclude that this was one of arson the testimony should be most clear, satisfactory and controlling. The counsel nor defense in a late case [that of Ruloff], had asserted that confessions were the weakest kind of evidence. he would show that the mass of evidence presented did not show what was claimed.

The social relations of Mr. Bennett were of the most pleasant character, and yet the Court was asked to say that he suddenly fell to the depths of crime! That he imperiled the lives of fifty human beings; that he, in short, entirely reversed the principles of human nature; that he fell from the highest point of innocence to the lowest of degradation. It was impossible. Mr. Bennett had said that he was in bed and asleep at 11:30 P. M. This was also asserted by his wife. She heard him and saw him come home, and they conversed and then went to sleep. No innocent man could have done that. When he was awakened he ran to the fire, and did the most natural thing, attempted to enter the store, and was prevented. He went home, and soon called a meeting of his creditors. They treated him leniently; they appointed a committee which finally decided to take forty-five

cents on the dollar, which would absorb the insurance of \$117,000. The adjustors who had access to Bennett's books found nothing unusual, they had hence not been put on the stand. Mr. Bennett's bills had shown that he purchased over \$400,000 worth of goods from February 18, 1869, up to the time of the fire.

The fact that Bennett was not put on the stand at first should not militate against him, because they had thought best to put in the proofs first. He (Bennett) had never for a moment hesitated. The defense for several days had nothing but

#### HALF A BUSHEL OF MOONSHINE

as to evidence. What next? Why, rumors, of compassion for Vedder came! Francis P. Vedder's testimony was wholly unworthy of credit. This story was improbable and unnatural. Criminals who committed arson did so not in the presence of crowds but secretly. The counsel supported his proposition by reading from an old speech of Mr. Mitchell's. "Crime was not perpetrated in the presence of witnesses." Vedder's story carried its own condemnation on its face. It would make it that seven beings, leaving out the lady, knew of this crime.

Again Vedder had testified knowingly to the loss of his books. Also that he did not know of the cause of the fire, and was not in any way privy to it. He contradicted himself, he was a perjured man. Was he supported by the material fact he would establish? If he were not, he should be believed guilty of perjury and not entitled to credit.

After adjournment of one hour for dinner Mr. Harding continued his argument against the acceptance of Mr. Vedder's evidence on the ground that he was an accomplice. He also maintained that Mr. Vedder's sons were accomplices and hence their evidence should not be admitted. With all this evidence stricken out there was nothing in the case to prevent a recovery.

#### NO CONSPIRACY.

There was no proof in the case of any conspiracy to defraud the insurance companies. He quoted the definition of the word and asserted that a conspiracy must be first proven.

#### NO MOTIVE – LARGE AMOUNT OF GOODS.

Every circumstance should be properly established by evidence. six or seven clerks had testified as to the quantity of goods in the store on Christmas; they had affirmed that on that day there were upwards of \$200,000 worth of goods in store. Upon this question of fact, as the sold question the preponderating evidence was in favor of the prosecution. Two uninterested witnesses had sworn to the same thing.

Again the lack of motive was shown because the books exhibited over \$200,000 worth of stock on hand at the time of the fire; the revenue reports showed this also. The defense predicated upon weight must also fall if he (Harding) were correct.

#### BRIGG'S AND BENNETT'S TESTIMONY.

Both Bennett and Brigg's had contradicted the story of Vedder. He asked where would be the question of fault here. The defense would point out some irregularities on the part of Briggs, but there was no impeachment of his character; neither that of Bennett's. Bennett had, to be sure, given testimony contradictory, and yet no one could produce a transaction fifteen months old and relate all of its details. Bennett's conduct on the stand was so high-toned, and his whole conduct for the last fifteen months was of the same character. Bennett and his wife said (he) (Bennett), was at home at 11:30 P.M.; Muldoon and another witness said he was not; the former were alone to be believed.

#### THE BRIGGS BRANCH;

this branch was thoroughly and entirely cleared up. The inventory by Loucks produced in court was ordinary and unshaken. Briggs was very orderly in his business; kept about what goods he wanted; they were low-priced goods; his books showed about \$25,000 worth of goods on hand, and this was sworn to by the clerks. No rolls of carpets had been shown on the express books, but one of the witnesses had sworn that pieces of carpet had been packed in the boxes. Mundy and Campbell had both stumbled; the former's assertions were contradicted by Mr. Bennett as to a carpet which did not come back into stock. Campbell's assertion were negative by three or four witnesses. A colored boy, waiter at the Crouse House, stuck his nose down to Bennett's grates at fifteen minutes to eleven o'clock, and smelt no kerosene; he swore that the lights were also out in Bennett's store at that time.

Miss Merrill, he thought, was all right, and had acted only naturally; one or two of the servants had sworn against her, but they were prejudiced.

The general impression made by the fire was that the flames above in the Crouse House had caught from the fire below.

Bennett had sworn that he had given no check in payment for borrowed money of Vedder. The check had been produced and it refreshed Mr. Bennett's memory, and he had concluded the check was all right. He had taken an interest in this case, not only on account of the dollars and centers, but also because Mr. Bennett was an old neighbor of his own.

#### MR. MITCHELL'S REMARKS.

The case was important in a monied point of view, but there were other considerations to community which were vastly superior. He was entirely convinced of the guilt of the parties, Bennett, Fralick, Briggs, and Vedder. He did not understand the law in this civil

case as making it necessary to remove all doubts as was necessary in criminal causes. He cited authorities proving this. In civil action the decision was to be rendered on the preponderating evidence.

#### THE MOTIVE FOR THE FIRE.

There were two motives which led to the commission of this crime. Fralick and Bennett were warm friends in Little Falls and old acquaintances. They went to Syracuse at the same time, and were more or less connected. Fralick had two or two or three firms, and in two of these Bennett was the appraiser. There was an intention to burn Bennett's store with the view to make money, and money was a motive. The way they were to do it was to purchase largely, run in debt for them, and then ship them off to side stores, and burn up the original store, claiming the goods were all consumed.

The scheme was to save the goods, claim they were burned, and thus establish the necessity of compromise, obtain that compromise, which was obtained, sell the goods, and divide the profits.

#### THE CONSPIRACY.

He would not pause to discuss the reliability of circumstantial evidence, it was deemed important, especially in criminal cases. Was there a possibility for Bennett to be innocent? Upon the face of the case, the manner in which the insurance was procured was suspicious. Bennett was doing a larger business in '68 than in '69; sold vastly more goods then, still his insurance was far less. During October, November and December Bennett had procured short insurance to the amount of \$50,000. During all this time he was engaged in shipping his goods to side stores and making preparations for the fire. Bennett and Vedder had both more insurance at that time than ever before, and yet their stocks should have been; and usually were light. An honest man, too, would have been anxious to have been put on the stand to have cleared up the case. Bennett had not been put there until the defense had been driven to this. Fralick, this intimate, this "Adam - come-over-to-my-office-associate," had not been put on the stand. Miss Merrill, whom Bennett visited in her room alone, as the servants said; this woman whom Bennett had put in the Crouse House, and who had, as his assistant horse jockey, not been called.

Bennett had sent West his book-keeper away on Christmas eve. Why was this? Wheeler could have invoiced the stock at the Cortland store? It was simply convenient for Bennett to have West away. When West returned he shook the doors back and front twice. Why was it he could not obtain admittance that Saturday night? Was it not because they did not wish him to see their preparations! Bennett was a man who could do anything with Briggs. He had put him in the Rome store and to prevent any unpleasant impressions had put that article in the paper saying Briggs had a large fortune left him.

A fire started in that cellar usually would have been put out at once. Hence Fralick said there "must be no failure." They must therefore put up blinds in the cellar that no one



could look in. the payment of the clerks in December was a strange and unusual thing. The cost mark was also changed just at the same time the cost mark was changed at Rome, Auburn, Oswego, and at Vedder's store. All the story about Robinson's not sleeping in the store was a pretext. They had proved by the neighbors that they all supposed he was away at night. Why did they not call Robinson's wife to show that he was not there simply because she would swear what she had stated, that she "was glad he was not there that night," as indeed he doubtless was not. but he was away for only one or two nights, and one of these nights was the night of the fire. this woman could have settled all that question, and yet they did not dare put her on the stand.

The evidence of Mr. and Mrs. Craig, disinterested witnesses, was of vast importance. It was a point that could not be successfully met. Mrs. Craig roomed on the first floor front, Crouse House. She was absent until about nine o'clock from the Crouse House. When she got back at ten o'clock, she smelt kerosene so strongly that she spoke to her husband about it. She got up and opened the ventilators and still the smell increased in strength. She finally got down on her knees and it seemed that the smell was stronger. She got up twice and finally went to sleep still smelling the kerosene. Should the Court believe that this smell of kerosene came from a common use of the article? No. It smelt so strongly that Mrs. Craig's eyes smarted terribly. Her evidence was supported by that of her husband, and also that of other witnesses. Was Bennett there when Mrs. Craig smelt the kerosene at nine o'clock? He, Bennett, admitted he was. If he was there, according to his own admission, then he was there as an incendiary, because none could doubt that the kerosene smell came from the basement. No one pretended now that this fire was an honest fire. how did Bennett propose to get out of it? By letting go the arm of his dear friend, Adam Fralick, and saying that he, Fralick, might have gone in there, and fired the store. How did that Crouse House come on fire up stair? Miss Merrill, a friend of Bennett's had charge of it. Did the fire come up the soil pipe from the basement? Chief Engineer Eckle said he had gone through and looked, and only found fire in a room remove 39 or 40 feet from where the soil pipe came up, he wanted Miss Merrill sworn, but she had not been. The cook was the first one up in the house at the time of the fire according to the evidence. a woman, this cook waked up, dressed from the third story as she (the woman) left the room. The reason why they got control of the house was simply to put some of their friends there to rouse the boarders, because he did not believe that even Bennett or Fralick desired to take human life. If the fire went up the soil pipe it would have burst out in the kitchen, where the Chief Engineer says he saw no signs of fire.

**SYRACUSE NEW YORK DAILY STANDARD  
JULY 4, 1871**

**THE BENNETT INSURANCE CASE**

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**End of the Trial at Utica**

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**Sharp Concise Argument of Mr. Mitchell**

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**Mr. Sedgwick's Eloquent Defense of Mr. Bennett**

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**"If the Insurance Companies Triumphs, It Means Arson in the First Degree"**

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The Bennett insurance case – the suit of Bennett's New York creditors to recover the amount of \$117,000 insurance assignment to them – came to an end, at Utica, last Saturday afternoon. Mr. Mitchell, counsel for the insurance companies, did not complete his argument Friday. He concluded Saturday morning a very able and exhaustive review of the evidence adduced during the trial. His remarks occupied about four hours. No points of facts were left untouched. He claimed for the direct evidence great consideration from the court. Then the circumstances were picked up. Link after link was supplied, commencing with "the arm in arm walk" of the alleged conspirators at Little Falls; their social and business connection in Syracuse; the motive for the fire; the culminating point spoken of by Bennett; selling goods at 60 cents on the dollar to Vedder; the large amount of insurance just before the fire; the shutting of light out of the front part of the basement; sending west to Binghamton, and his unsuccessful efforts to enter the store on his return; the purchase of the ten gallon can of kerosene; the words heard by Mundy when the gas was turned down in the carpet room; "What became of the books?"

“They were burned, ha! Ha!” Every circumstance that had come to the knowledge of the defense was gathered, and forged, by eloquence and reason, into a strong chain which the referees only to have the power to say was broken again.

The reply of Mr. Sedgwick on the part of the prosecution was masterly. His blows on the Vedder confession were crushing; his allusion to the Christmas family of Mr. Bennett brought tears to more eyes than his who was deepest interested. His third theory that Fralick fired the store by entering the unbarred basement door, was most ingenious – his whole argument was convincing – to what degree the Referees will answer.

### **The Defense – Mr. Mitchell’s argument Continued**

The very goods which they assumed to have been burned, had been sold partly at auction in the streets of Syracuse. The evidence accumulated. Why did they move up to the side of Bennett? Simply because they wished to make the exchanges easier and without suspicion of sending so much so far. It was preposterous for Bennett to say that he did not want Fralick to rent next to him, when he was cheek to jowl with him at the very time he made the assertion. Why did they rent that store in Brigham Block when they did not need it save to have a place where they could send the goods when the time came. Miss Keeler, whom Fralick admitted to that store, had been obliged to give it up as soon as Fralick ceased to sustain her.

Why did Bennett leave that back door open? He was careful to fix the front door so that burglars could not get in. Why did he leave the back door open? It had to be unlocked so that the inference might be drawn by a jury or a court somebody went in there after he was gone. It would not do to lay the fire to Fralick save as one of the conspirators.

Just at the opportune moment Fralick takes off the night watchman and the regular police officer, whose beat was on that street, to Tasker’s saloon and there held them as long as he could. The hour was about one o’clock. The policemen got alarmed and refused to remain. Stafford was kept still longer, and when he and Fralick went back, the former smelt the fire. Fralick quieted his fears by betting him it was nothing but his cigar. Why all this effort on the part of Fralick, just at that hour of the night, save to cover the fire that had been set but a short time before.

The circumstance that the stock of goods from Bennett’s departments without notice; all showed connection of the parties. There was a piece of Scotch flannel sold on Thursday to be paid for on Monday. But Briggs took this off although he was told it had been sold. He simply wished to save it from the fire.

The customer Hackett, who came to purchase just before the fire had found it so low that he could not find what he wanted. The dry books down stairs that could have been broken up, and why, simply to furnish material for to set the fire.

SATURDAY MORNING

Mr. Mitchell, continued; - The evidence given by Vedder's two sons showed the fire was fraudulent, and that Bennett was a party to it. They testified to packing goods Saturday that came from Bennett's, consisting of popins, silks, etc.; that goods came to Vedder's Saturday night, and that they (the boys) packed up to twelve o'clock. The boys swear they did not that night pack a single dollars worth of goods from Vedder's shelves. A witness had sworn that he heard the packing going on up to two o'clock – two hours after the boys left. This must have been done by Adam Fralick himself. These young men contradicted Bennett when he said that only \$500 worth of goods came from his store Saturday night. Bennett was contradicted by the amount of goods in the boxes, and by these young men were packing – several hours. Dr. Van de Warker swears that he passed the store twenty minutes before the fire and that then there was a light then and the hammering of boxes going on. The evidence of these young men if not true could have been contradicted by Stafford the night watchman and by Fralick but they had not called either and the conclusion was irresistible that the Vedder boys told the truth. The summing up at this point that the evidence of the boys showed that thousands of dollars worth came from Bennett's store that Saturday night and that they packed those goods; that no goods were packed that night taken from Bennett's shelves. The evidence of Nye and his wife showed that a single trunk going to Auburn contained goods valued at over \$1,000. How strongly did this show that Samuel F. Bennett had perjured himself when he said only \$500 went out.

Why was it that so many men were concerned in this? They could get along with no less. They could not send so many goods to Briggs to Briggs to dispose of unless he understood the game. They took in Vedder for the same reason. Then when the fire came off Bennett took good care that both Briggs and Vedder should be there as *particeps criminis*. Bennett was discreet, but Fralick, when full of whisky, let drop remarks which pointed conclusively to the young man that something unusual was to happen. The young Vedders were supported by Kelsey, Dr. Van de Warker and many others. In turn the evidence of these young men support that of their father, Francis P. Vedder. Vedder swears that goods were bought and packed Sunday night. The boys swear that the back door was open and goods were coming in from Bennett's. Bennett himself swears he was in his store Sunday night; he must have known all about those goods that were carried for him that night into Vedder's.

The prosecution had hung to Fralick until Mr. Vedder had told the whole truth, and then they abandoned him. Every lie that Vedder had sworn to was in the interest of Bennett; the prosecution only changed fronts after Vedder's confession, every word upon which he perjured himself was indicted by Bennett himself; even the offer for change of venue was the production of Bennett. Bennett and Fralick were the leading spirits, and Briggs and Vedder were roped in to aid them.

Mr. Mitchell said he defended the case not only on the arson but on the sworn proof of loss. The sworn loss was \$245,000, and this had been shown to be fraudulent. \$175,000 worth of goods went into Vedder's and Brigg's store that could not be accounted for; this would leave about \$50,000 worth remaining in Bennett's store and this amount remaining was confirmed by several witnesses who had been called by the defense.

A. J. Davis presented the branch of the argument in regard to the account of goods shipped to Rome and other places, and shown by the express books and the weights obtained by Mr. Ree and Mr. Titus. He demonstrated that goods were removed from Bennett's store and shipped to Briggs which bills did not account for.

Mr. Mitchell continued. The made[up bills in Bennett's hand-writing and which he claimed went to Rome as commission goods, could not have gone there because no such shipments appear on the railroad or express goods. The prosecution has seen this dilemma in which Bennett had thrown them and they called to Louck's to show that these carpets, etc., commission goods went down in the regular dry goods boxes, and of which bills were sent. But he wouldn't swear to that even; he only declared that on one or two occasions he saw carpets; No! But pieces of carpets in the boxes! Even the Rome bills of the prosecution fail to show these commission goods, -only in two instances do they show carpets.

Bennett's scheme was to make clear \$175,000, which worth of goods were sent out of his store unaccounted for. He would say to his creditors that he never pretended to be worth but \$40,000 or \$50,000; that over \$200,000 worth of goods had been burned and that he had only \$117,000 worth of insurance, "you must take these insurance policies and let me go free." They<sup>7</sup> did so' let him off at 45 cents on the dollar, while he was secreting and selling this \$175,000 worth of goods that he had claimed to be burned. Here was the motive for Mr. Bennett's crime! One hundred and seventy-five thousand dollars were to be made by him!

If Vedder had sworn falsely in all instances, the prosecution was "hoisted by its own petard! When they procured Vedder's affidavit for a change of venue. But the only false swearing done by Mr. Vedder was before he had been broken down on the trial. Mr. Bennett's own deposition shows the arson by his admissions which are two material points save the one of applying the torch.

When Vedder was a witness in favor of the prosecution, it came out on the cross examination by Mr. Sedgwick that he had put down in his memorandum book the amount of \$30,000 which he had given in notes to Bennett, and which Bennett tore up and took Fralick's instead. Vedder had also inserted in that memorandum book, a \$10,000 note additional which he owed Bennett, all of which notes had been given for goods received since the fire! And for which only 60 cents on the dollar had been paid! Bennett denied all this, and why! It showed that the goods were not burned as Bennett claimed. This evidence had been drawn out by the prosecution itself when they claimed that Vedder told the truth.

That Vedder sold goods to Briggs which Bennett swore to was another lie. To be sure the prosecution had produced bills of such claimed goods, but when Vedder's books were found, they showed no such account open with Briggs, and Vedder swore that he never sold such goods before the fire.

Mr. Mitchell closed the case, by stating that he rested the case on these two points: - That Bennett's proofs of loss were fraudulent, and that he (Bennett) was a guilty party in destroying that store by fire, and hazarding the lives of so many innocent people.

### **The Defense – Mr. Sedgwick's Remarks.**

It was not necessary for the plaintiffs to show how the fire occurred; it might have been caused by accident. Any other theory involved crime which could not be believed unless proven. The fire might have been caused by that defective flue, but the witness of the defense on this point had not cleared up the fact that there was some trouble about the furnace. If the fire was not accidental, then it must have been fraudulent. The defense had claimed that Fralick, Bennett and Briggs set the fire, and they claimed to support this by direct and circumstantial evidence. There was another theory, which might be true, that Bennett set the fire. But before accusing any man of setting this fire, some controlling motive must be pointed out; it must be such a motive as would ordinarily induce new acting upon common principles of humanity. But how was this case? It hazarded not only immense amounts of property but the lives of persons intimate with Bennett, - of his social friends, - of clerks in his employ. This fire was charged upon Mr. Bennett, who, through a long life of business, had earned and maintained a fair reputation. There was only one pretence in the case, and that was that Bennett burned the property for money; that he had plotted for years to reap the very uncertain results at the best which he would obtain. Had he succeeded at the best, his creditors could have thrown him into bankruptcy, and obtained all he had.

The main claimed to have taken such fearful risks, had an increasing, and as he supposed, prosperous business; his credit was good at home and abroad; he had no judgments against him. If he looked forward to embarrassment what would have been the course of such a man as Mr. Bennett was? Would he have gone into such a desperate crime or have taken one of the many other methods more consistent with his honest life? Had he been a villain even any other course would have been attended with fewer hazards and perils than the one claimed by the defense. But was Bennett insolvent then? He owed \$275,000! He owned property to about that amount in Dion; had a house in Syracuse and a block in Little Falls and some \$30,000 of commercial assets. There was nothing produced in evidence to show that Mr. Bennett was insolvent. The usual motive of a fire was a large insurance on a small stock. Nothing of this kind could be shown in this case. These general considerations of motive applied to Bennett, but as to Briggs the claims of the defense would make his part in the fire an act of mere wantonness. The theory of the defense also made it necessary to purchase the silence of Briggs. He (Briggs) could have at any time set up a claim for all the goods Bennett had intrusted him, and which Bennett would not dare dispute. He would not stop to comment on the absurdity of the idea that Bennett put his goods into Vedder's store when they were almost as sure to be burned.

By different methods of calculation it could be shown that Bennett had a much larger stock on hand than \$200,000. The books showed this, and they were proven to have been kept in an orderly way. This amount of goods should have been in Bennett's store on the

last of December. It had been proven by one of the creditors in New York who went over and estimated the stock twice from \$220,000 to \$240,000. But if the evidence of the defense was to be believed that stock had been reduced to \$50,000! The evidence of the clerk. The books if kept honestly represented the true condition of that stock. They had not been impeached, and the prosecution had supported the averments of the books by the reasonable evidence of competent persons, and hence these books should be believed.

No criminal motive of money could overturn the moral motives which weighed upon Mr. Bennett at this time. They had wrights through a principle of law to weigh one against. The other.

If Vedder spoke the truth the defense was indeed proven. But the history of the case was the best commentary upon that evidence. The affidavit of Vedder had not been drawn out of him as charged by the defense. Mr. Sedgwick then briefly gave a history of the case up to the time Mr. Vedder testified at Syracuse. The confession of Mr. Vedder had surprised him; as also that of Nye and his wife. He had never spoken to Vedder till after the evidence of Nye and his wife. He then asked Vedder to explain Nye's statements. He promised to meet him (Sedgwick) and do so and failed.

The reason why Bennett called to see Vedder at home was to inquire about that evidence of Nye. There was no concealment about this and they had a right to inquire into it. But Vedder avoided the prosecution; sought counsel and with the State Prison staring him in the face because he knew Nye told the truth, admitted he had the guilt and perjury in respect to his books. But this as for the defense was concerned was of no moment and so Vedder must concoct a monstrous lie in regard to the prosecution – something that would be of benefit to the defense. To be sure Vedder might be too weak minded to concoct the story; possibly he did not get up. But the court would remember the old mans crafty tick about that telegram which he sent to Nye at Auburn. Whether invented by Vedder or not the story was not to be credited; it was the evidence of an accomplice; it was in conflict with his statements under oath. The price he had to pay for exemption from prosecution was the most fearful perjury for the defense. His statements were those of a confessed perjurer induced by fear and hope of escape. *Falcis in uno falsus in omnibus* was a principle in law. Court then applied to Vedder in full force.

Again it was improbable that so many persons committed a crime. It was hard enough to believe that four persons, yes seven persons pursued this work fraught with probable death to innocent victims. It was wholly unnecessary to take that weak, vicious old man into the crime if it had been committed. It was wholly unnecessary to have brought Briggs in; this showed a great moral improbability.

The improbability of Vedder's story in regard to the 60 cent goods was apparent. He was the only witness of any such averment. The 60 cent goods were not accounted for by bills or by any writing. Bennett in his denial of this was supported by his clerks and by the fact that pieces of such goods could be found.

Vedder had stated that a knowledge of the fire had been communicated to him only three weeks before fire. Could Vedder have cognizance of such a thing as that and not be able to tell when, how and where, indeed the full particulars of such a transaction! And yet he could affirm none of these particulars. Had he received such an amount of 60 cent goods as \$80,000, which he must have had if his story was true, how was it that his clerks and no one else ever hear of it? These notes of \$30,000 which Vedder claimed. How was it that these were only heard of through Vedder himself; no one ever claimed those notes; no one had ever prosecuted Vedder for those notes.

The story of Vedder's boys was improbable. The curtain aside which one of the boys swore he looked, covered the whole window; the key hole through which one of them looked was not four feet high as sworn to. But there was no necessity for Bennett to have gone into Vedder's that night, even if he desired a secret interview. He had a basement of his own when he could have talked in safety. That averment of the defense was very improbably as was also the affirmation of the boys that they walked the street for three-quarters of an hour. But what is the character of the boys? They ran away from a subpoena; they came back on a telegram; they were drilled to tell a story about the books; did not their conduct, then and after, show their character? They exhibited no feeling at the fire because it was to be of "no loss to them." Coldness and levity or manner were the tests of the true character of a witness.

The evidence of the defense had been met with a full, plump and fair denial by both Bennett and Briggs. Bennett on his first deposition had told the truth and his evidence before this court had not swerved a hair from what he then stated.

How was the claimed connection of Bennett and Fralick shown at the time they came to Syracuse? They had no connection then and were only shown connected for some two months. Did the fact that Bennett opposed Vedder and Fralick in the renting of a store next to him, show confidence or otherwise? Bennett and Fralick had no connection either in business or social relations. When finally Bennett sold goods to Vedder he only did so after careful examination of his financial responsibility.

Mr. Bennett up to the time of Mr. Vedder's testimony believed that to be an accidental fire. He did not believe it fraudulent one on Vedder's testimony, but that testimony had led to examination in other directions. The prosecution had nothing to do with Fralick at all; he had come into the store as a representative of his principal – Vedder. He could not believe that upon the direct evidence, against the law, against reason, against moral motives, the court could decide against the prosecution.

#### THE CIRCUMSTANTIAL EVIDENCE.

Mr. Sedgwick then said he would not deny a satisfactory case could be made out on circumstantial evidence. It was when the circumstances admitted of no other construction than that of guilty. In looking at the circumstantial evidence the direct evidence of Vedder should be left out of the case, it only bewildered and blinded. These



circumstances, it must be remembered, were insufficient if they did not exclude any other hypothesis.

The first point of such evidence was that of insurance. It was the universal custom of merchants during the winter season, and when a large amount of goods were had on hand, to have a large amount of short insurance. But Bennett had fifty per cent less insurance than goods in store if the theory of the prosecution were true. All the insurance he had had been obtained by agents. There was nothing unusual then in the circumstances of obtaining it or the amounts obtained, and hence did not go to establish Bennett's guilt.

Another circumstance they had named was the delay in putting Bennett on the stand. This was merely a matter of judgment of plaintiff's counsel. It showed nothing, as did the omissions to call Fralick and Miss Merrill or Cowles. Cowles had nothing to do with the case; why did not the defense call in all the witnesses to establish the claimed guilt of the party.

The existence and conduct of the Wheeler store as bearing upon the point that Bennett made it receptable into which to turn goods. The existence of that store at Homer, Cortland, Marathon, Moravia and the Cortland proved the innocence of Mr. Bennett. Goods had been sold from that store to Binghamton; these had been spled and brought back, accounting to twelve boxes of remnants. West had gone to Binghamton on his own business and had come back to Cortland to take an inventory of stock. He had not been sent away to be out of reach of the fire as claimed; his business as shown had been legitimate. At this store Bennett, had been so minded, could have sold all the goods he had a mind to, but instead of that we find him closing it up because it does not pay. This is inconsistent with the idea that he was overflowing his other store with stolen goods and was strong proof that he (Bennett) had acted honorably and honestly.

The evidence of Cronkite was partial and biased, and it had been answered by that of the cashier of a Little Falls bank.

Fralick, as an agent of Vedder, had business with Bennett, and yet he was with him no more than business required. The evidence of the character of "apple jack" and "Adam come over to my office" was of the trivial character of "chops and tomato sauce;" deserving of no consideration.

In regard to the Briggs store, no evidence had been adduced to show that it had been made a receptable for stolen goods. Was it impossible for Briggs to have had ambition to go into business for himself. It is not improbable that Bennett was willing to aid him, as he had aided others; Briggs had been shown trustworthy and honest, and hence Mr. Bennett trusted him. Mr. Briggs was no bookkeeper, and could not be responsible for those employed in that capacity. Very few of the bookkeeper's bills had been found missing; he was careless in making up Bennett's account, but the bulk of the money Briggs received was shown by his cash book to have paid by his creditors.

## AFTERNOON SESSION

Mr. Sedgwick continued that the pretence was that all the shipments to Briggs were mere sham; that all the property belonged to Bennett. If this were merely a place to hide goods, why did Briggs purchase in New York without consultation with Bennett? The fact was that Bennett had little or nothing to do with Briggs, save a customer. Briggs had formally been Bennett's clerk, and that explained why he was so intimate with him socially. Bennett's settlement with Briggs, and which appears on the books, shows the whole transaction to have been an honest one.

The argument of the defendants was also that more goods went to Briggs than was shown by the bills. The uncertainty of the railroad weights was commented upon. There was no proof that each bill went on the day stated. The inaccuracy in the list, the partiality of weighers, and the bad packing of Robinson, all must be considered. The defense attempted to say that these false weights covered \$175,000 worth of goods. The evidence of the books, etc., flatly contradicted this, as did that of the New York merchants who estimated the cost of the goods in Bennett's store the last of December. The direct proof of the prosecution on this point was heavy. Bennett could not have packed those goods, he didn't know how. If anyone packed them it must have been Bennett's assistants who with Briggs must be guilty of perjury in asserting they never did such a thing. The court could not believe this.

As to the goods alleged to have been of Vedder before the fire, this was proved by Briggs and Pakenham and others. If Adam Fralick sold these goods and did not enter them, it was no business of the prosecution. They did not pretend to control his actions. The blimps put up in the basement of Bennett's were simply repaired to exclude the cold weather. Bennett also paid his clerks at Christmas simply to make them feel good and pleasant; and it was straining too hard to make this seem more than natural. The charge of the cost mark, the disappearance of Bennett's old books were explained. Robinson's testimony had given sufficient reason why he was not there and why his wife should not be called.

The testimony of Mrs. Craig who smelt the kerosene so strongly was reviewed. The idea that she could smell burning kerosene from the basement was absurd. Read the testimony of the husband of Mrs. Craig, and "to use a good saxon word" said Mr. Sedgwick "it takes the stink all out of this testimony." The smell of kerosene might have come from the grocery store near.

The next point was that Miss Merrill set the fire in the Crouse House had been inaugurated by Bennett simply to prevent dirty water from the kitchen running down upon his goods. Chief Engineer Eckel had testified as to the locality and so had Robbins the negro waiter. Eckel was mistaken and the negro told the truth. The latter was better acquainted with the premises. The fire must have gone at some time up the soil pipe where the negro fixed it at the time he saw it. Witnesses had differed as to the dress Miss Merrill wore, she did nothing but what an alarmed woman anxious to save her boarders would do. She had no unreasonable insurance; neither had Correll's. Miss Merrill did

not enter into that foul conspiracy. Bennett might have been mistaken when he said he saw the fire upstairs in the Crouse House before it reached that story. Witnesses swore that they at some time saw both the upper story and the first story burning at the same time. They did not set the fire with candles of equal length because the fire would have flashed through the ropes of kerosene as quickly as it would through gunpowder. It didn't flash through as quickly; was a smothered fire at first and hence the theory of the defense was not sustained.

The evidence that the store was depleted of goods was very weak in contradiction to the direct testimony of the prosecution. To be sure that Hackett had heard of the fire and had immediately visited Syracuse again, and claimed to see through the whole thing as easily as Mrs. Craig smelt through it. The flannel sold to the ball club Briggs bought; the sale to him was seen; the ball club might not have called for it on Wednesday when promised. The talk of Bennett and Fralick in the carpet room heard by Mundy was of no account whatever, because but a single expressions were dropped. What proof was there that Bennett raked Vedder's money drawer? Counsel had introduced "raked" about as often as he had that little innocent walk in Little Falls. There was no proof that Bennett received any money from Vedder's drawer.

Mrs. McCormick had seen goods packed that Saturday (Christmas) afternoon. It was true, but only that \$500 worth which Briggs had bought.

Bennetts story was then rehearsed. His conduct before, at, and after the fire was all the natural action of a good man and had none of the consciousness of guilt. Muldoon who contradicted Bennett as to the time was too accurate in his testimony to tell the truth. The pieces of silk and poplins taken out of the ruins were those that had been claimed to have been packed and sent away. The goods to Oswego and Auburn, save in one or two bills, had all gone from Vedders store, Bennett had nothing to do with them. There was no proof that Vedder's goods did not come into possession in a number of different ways from those mentioned.

Bennett's books which had finally been balanced by both sides, and accounts were referred to. He concluded this branch by stating there was no proof of the crime by circumstantial evidence.

He then advanced the third theory in regard to the fire; that the store was fired by Vedder and Fralick to further their designs.. Vedder had admitted he was capable of this. He would not convict Fralick on Vedder's testimony. If the evidence given by the defense were true he need not argue much to show that Fralick was the very man.

The motive for such crime was sought for. It was in evidence that Chas. Fralick was in the store making up bills for two days. The fifteen boxes filled with goods could not have come from Bennett's store; they were filled with goods that came from Vedder's wholesale department. It was Fralick and Vedder's design to burn that store; they knew there had been some talk about Fralick's setting fire to his stores, and hence they thought it would be safer to fire Bennett's store, and they did this by getting into that basement

door left open by Bennett; Bennett would not have left that door open if he was guilty of preparing to fire his own store. It must have been pushed open easily by Fralick and the store fired. His motive was of course to obtain the insurance of some \$25,000. He didn't think the evidence was sufficient to convict any one but Vedder.

The counsel stated that the discrepancies between Vedder's testimony and that of his sons were numerous. He did not rely upon those discrepancies, but upon the bad character of Vedder generally. Taking all into the case, there was nothing that could incite a man of Bennett's social standing and character to commit the crime of which he was charged. No man would turn so suddenly from an honest life. Bennett was not afraid; he awaited the decision of the court in confidence; if the court decided against Bennett, it convicted him of arson, and stamped upon him the character of a prowling, plotting, convicted felon, who would sell his honor for a small sum of money.

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